



4000-01-U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration decision.

SUMMARY: The Department of Education (Department) gives notice that, on January 11, 2012, an arbitration panel (the Panel) rendered a decision in Illinois Department of Human Services, Division of Rehabilitative Services v. U.S. Department of Transportation, Federal Aviation Administration (Case no. R-S/10-02).

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the Panel decision from Donald Brinson, U.S. Department of Education, 400 Maryland Avenue, SW., room 5045, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7310. If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

SUPPLEMENTARY INFORMATION: The Panel was convened by the Department under the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-1(b), after receiving a complaint from the Illinois Department of Human Services, Division of Rehabilitative Services. Under section 107d-2(c) of the Act, the Secretary publishes in the Federal Register a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

#### Background

The complainant, the Illinois Department of Human Services (IL DHS) Division of Rehabilitative Services, alleged that the respondent, the Federal Aviation Administration (FAA), violated the Act when it rescinded a permit authorizing the Business Enterprise Program for the Blind (BEPB) to operate vending machines at the FAA facility in Elgin, Illinois. The BEPB is responsible for administering the Act in the State.

Specifically, on January 4, 2006, the FAA negotiated and signed a permit authorizing BEPB to operate vending machines at the Elgin facility. Both parties agreed the facility was a satisfactory site for a vending facility under applicable regulations. On July 31, 2006, BEPB wrote the FAA asking when vending services would be implemented.

On December 20, 2006, the FAA responded that there had been a change in the requirements for service and that it had awarded a contract to another vendor.

Communication between BEPB and the FAA ceased from December 20, 2006, until September 2, 2008, when the BEPB program administrator, Raven Pulliam, wrote to Lois Flick at the FAA concerning the permit and requesting a date for installation of vending equipment. Hearing nothing, Pulliam wrote to the administrator of the FAA's regional office on September 21, 2010. On October 27, 2010, a representative from the regional office responded that the FAA was going to terminate the permit, specifying that the FAA's requirements for food service had changed. On November 18, 2010, the IL DHS filed a complaint and a request for a Federal arbitration with the Secretary of Education.

IL DHS alleged that the FAA unlawfully: (1) voided and withdrew an irrevocable agreement; (2) identified the Elgin facility as a "satisfactory site" for a vending facility but did not offer priority to blind vendors to operate such services; and (3) continued to violate the permit by refusing to allow a blind vendor to operate at the Elgin facility since January 2006.

IL DHS requested that the Panel grant the following relief: (1) 50 percent of all income from vending machines

currently in operation at the Elgin facility; and (2) prejudgment interest and interest from the date of award until paid.

The FAA raised the affirmative defense that that the Act was not applicable because the Elgin facility did not meet the minimum requirements of a "satisfactory site." The FAA also argued that: (1) the operation of a blind vending facility would adversely affect the interests of the United States; (2) the permit was not an agreement or a contract but an authorization of the provision of vending services that could be terminated with 30-days' notice; and (3) BEPB did not raise issues or contest the termination when it was notified of the FAA's intention to contract for services in December 2006 (the laches defense).

In response, IL DHS stated that BEPB entered into a contractual agreement with the FAA, which could not be unilaterally revoked. It also argued there was no Secretarial determination that the placement or operation of the vending facility under the permit would be adverse to the interest of the United States and that, by signing the permit, both parties agreed that the Elgin facility met the minimum criteria identified as a "satisfactory site" for a vending facility. IL DHS contended that the laches defense is not applicable and that the applicable State

statute of limitations for bringing a contract action is 10 years.

The FAA claimed the laches defense should still apply, stating that an opportunity to exercise one of the Act's exemptions would have been made possible if it had been aware of the BEPB's position earlier.

#### Synopsis of the Panel Decision

The Panel convened a status conference by telephone on November 11, 2011, and the chair issued a pretrial order requiring both parties to submit stipulated facts and exhibits by November 30, 2011. The Panel concluded that an evidentiary hearing would not be necessary. A hearing was held by telephone conference on January 11, 2012.

The Panel unanimously determined that, when the FAA and the BEPB came to a contractual agreement for the operation of vending machines at the Elgin facility, the FAA obligated itself under the Act. Furthermore, the Panel determined that the FAA forfeited any statutory exemptions given that its signature on the permit removed any claim of insufficient space, minimum level of vending machine income, or the configuration of the facility's space. Therefore, the Panel determined that the FAA was liable to the IL DHS.

Although the Panel determined that laches did not apply, it also found that the BEPB would be unjustly enriched were the Panel to award the BEPB damages for the 20-month gap in which it failed to contact the FAA. On this basis, the Panel awarded the BEPB a total of \$4,320.00 as the amount of the FAA's liability through March 2012. The computation was based upon a reasonable estimate of 50 percent of net income from vending machine operations, or \$80 per month, multiplied by 54 months. The Panel also determined that BEPB was not entitled to pre-judgment interest.

The Panel found that the permit should remain in place and stated that it hoped that the parties would negotiate, without any more delay, on establishing a vending facility on the Elgin facility. The Panel also retained jurisdiction in this matter to ensure that its decision would be adhered to.

The views and opinions expressed by the Panel do not necessarily represent the views and opinions of the Department.

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Dated: April 11, 2017.

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Ruth E. Ryder,  
Deputy Director, Office of Special  
Education Programs, delegated the  
duties of the Assistant Secretary  
for Special Education and  
Rehabilitative Services.

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